

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

JUNE 11, 2001

IN RE:)
)
)
APPLICATION OF MEMPHIS NETWORKX, LLC,)
FOR A CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY TO PROVIDE)
INTRASTATE TELECOMMUNICATION)
SERVICES AND JOINT PETITION OF MEMPHIS) **DOCKET NO. 99-00909**
LIGHT GAS & WATER DIVISION, A DIVISION)
OF THE CITY OF MEMPHIS, TENNESSEE)
("MLGW") AND A&L NETWORKS-TENNESSEE,)
LLC ("A&L"), FOR APPROVAL OF AGREEMENT)
BETWEEN MLGW AND A&L REGARDING JOINT)
OWNERSHIP OF MEMPHIS NETWORKX, LLC.)

**PRE-HEARING OFFICER'S ORDER AFFIRMING DECISION TO RETAIN
THE POST-HEARING BRIEF AND EVIDENCE PRESENTED BY THE
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 1288
IN THE RECORD OF THIS PROCEEDING**

On January 29, 2001, the Pre-Hearing Officer convened a Pre-Hearing Conference for the purpose of discussing the status of action following the filing of the Amended Application by Memphis Networkx, LLC ("Applicant"); Memphis Light Gas and Water ("MLGW") and Memphis Broadband ("Joint Petitioners") and establishing a schedule to completion. During the Pre-Hearing Conference, the Pre-Hearing Officer considered the Motion to Withdraw and Dismiss Petition to Intervene filed by the International Brotherhood of Electrical Workers, Local 1288 ("IBEW") on December 9, 2000. No party filed an objection or expressed comments in opposition to the IBEW's Motion to Withdraw prior to or during the Pre-Hearing Conference. Upon hearing no objections, the Pre-Hearing Officer granted the Motion to Withdraw. In addition, the Pre-Hearing Officer determined that the post-hearing brief filed by the IBEW on

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November 17, 2000 and the evidence presented by or elicited from the IBEW and its witnesses would remain a part of the record in this proceeding.

Counsel for Memphis Networkx and MLGW did not oppose the IBEW's withdrawal from the case but objected to the Pre-Hearing Officer's decision to retain in the record of this proceeding all evidence and filings put forth by the IBEW during the case. Counsel for Memphis Networkx and MLGW argued that such action would be inappropriate but did not provide any legal grounds for opposing the Pre-Hearing Officer's decision. The Pre-Hearing Officer ruled that his decision would stand, however counsel for Memphis Networkx and MLGW could submit a filing setting forth legal grounds at a later date. Time Warner Communications of the Mid-South, L.P. ("Time Warner") requested the opportunity to respond should the Applicant and Joint Petitioners make such a filing. The Pre-Hearing Officer determined that all Intervenor could respond accordingly.

The Pre-Hearing Officer entered an *Order Granting IBEW's Motion to Withdraw, Establishing Procedural Schedule, and Setting Hearing Date* on February 9, 2001. Pursuant to that Order, counsel for Memphis Networkx and MLGW were permitted until February 23, 2001 to file legal grounds for opposing the inclusion of this evidence in the record. Any parties desiring to respond were directed to do so no later than March 1, 2001.

On February 23, 2001, Applicant and Joint Petitioners filed *Memorandum of Law in Support of Objection of Memphis Networkx, LLC, MLGW and Memphis Broadband, LLC, to the Retention of Evidence, Filings and Arguments of the IBEW in this Proceeding Following the IBEW's Withdrawal from this Proceeding* ("Memorandum"). On March 1, 2001, Time Warner filed *Response to Memorandum of Law in Support of Objection of Memphis Networkx, LLC,*

MLGW and Memphis Broadband, LLC, to the Retention of Evidence, Filings and Arguments of the IBEW in this Proceeding Following the IBEW's Withdrawal From This Proceeding.

The Applicant and Joint Petitioners contend that the IBEW brief and evidence should not remain a part of the record in this proceeding because general legal authority holds that the withdrawal of a party leaves the case in the same posture as if the appearance had never been made. In support of this contention, the Applicant and Joint Petitioners rely on court decisions from jurisdictions outside of Tennessee. A review of these cases reveals that in each case, the Court addressed the issue of the effect of a withdrawal by a **party defendant**. Further, the Applicant and Joint Petitioners did not demonstrate that an intervenor in an administrative proceeding has the same status or role as a party defendant in civil litigation. The Pre-Hearing Officer does not find the legal authority presented by the Applicant and Joint Petitioners to be on point or persuasive to support their argument that the IBEW and evidence should be excluded from the record in this proceeding.

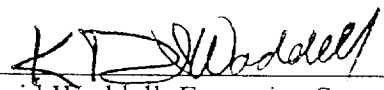
IT IS THEREFORE ORDERED THAT:

The Pre-Hearing Officer's Order granting IBEW's *Motion to Withdraw* issued on February 9, 2001 is affirmed and is in full effect and that the post-hearing brief filed by the IBEW on November 17, 2000 and all evidence put forth by or elicited from the IBEW and its witnesses shall remain a part of the evidentiary record in this matter.



RICHARD COLLIER
ACTING AS PRE-HEARING OFFICER

ATTEST:



K. David Waddell, Executive Secretary